

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

KYLE FINNELL,

Petitioner, : Case No. 1:17-cv-268

- vs -

District Judge Douglas R. Cole
Magistrate Judge Michael R. Merz

TIM SCHWEITZER, Warden,
Lebanon Correctional Institution,

Respondent.

**DECISION AND ORDER DENYING MOTIONS FOR SECOND COPY
OF STATE COURT RECORD AND APPOINTMENT OF COUNSEL**

This habeas corpus case is before the Court on Petitioner's renewed Motion for a Second Copy of the State Court Record (ECF No. 217). For reasons previously given, the State has no obligation to furnish a second copy of the record, to wit, the State has satisfied the Court that it is not responsible for any damage to the first copy of the record provided to Petitioner. The Motion for a second copy is denied.

The case is also before the Court on Petitioner's seventy-one page Application for Appointment of Counsel (ECF No. 216). That Application is denied for three reasons.

First of all, in the seven-plus years the case has been pending, Petitioner has proven himself fully capable of preparing complex legal arguments without the assistance of counsel, far more than most incarcerated litigants.

Second, the case is one of the oldest habeas corpus cases pending in this Court and has accumulated a record of almost six thousand pages. Appointing counsel at this stage would

undoubtedly delay completion of the case.

Most importantly, the Court lacks funds to compensate appointed counsel. While the Criminal Justice Act Plan permits appointment of counsel in non-capital habeas cases, Congress has never provided sufficient funding to appoint counsel beyond those cases where appointment is required by the Constitution. Counsel are entitled to be compensated and cannot be compelled to appear in the absence of compensation. *Mallard v. U.S. Dist. Court, S.D. Iowa*, 490 U.S. 296 (1989).

March 11, 2024.

s/ *Michael R. Merz*
United States Magistrate Judge